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9 **UNITED STATES BANKRUPTCY COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**

11 In re: Charles Leanthers Coffey,)
12) Case No. 09-72280 J
13) Chapter 11
14) Debtor.)
15) Date: April 21, 2011
16) Time: 2:30
17) Room: 215

18 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF**
19 **MOTION TO DISMISS CASE**

20 **ISSUES**

- 21 1. Is there cause under 11 U.S.C. § 1112(b) for conversion or dismissal of this case?
22 2. Is conversion or dismissal in the best interests of the creditors or the estate?

23 **FACTS**

24 The debtor filed this case on December 23, 2009. The Court ordered the Debtor to file a
25 plan and disclosure statement by May 31, 2010. The Debtor filed a plan and disclosure
26 statement on June 1, 2010. The court did not approve that disclosure statement, and ordered the
27 debtor to submit an amended plan and disclosure statement by October 7, 2010. The Debtor
28 filed an amended plan and disclosure statement on October 28, 2010. At a hearing on January
29 27, 2011, the court denied approval of the disclosure statement and took various motions to
30 value property off calendar. Since that date, the Debtor has not submitted a third plan and
31 disclosure statement, nor has the Debtor reset for hearing the motions to value collateral.

There is no indication that there would be any distribution to creditors if this case were converted to Chapter 7.

ARGUMENT

A substantial or continuing loss to or diminution of the estate coupled with the absence of a reasonable likelihood of rehabilitation is cause for conversion or dismissal. 11 U.S.C. § 1112(B)(4)(A). Failure to file a disclosure statement, or to file or confirm a plan, within the time fixed by the Court is also grounds for conversion or dismissal. 11 U.S.C. § 1112(B)(4)(J). In this case, it appears that the Debtor is unable to confirm a plan of reorganization. This is cause for conversion, as the list of 11 U.S.C. § 1112(B)(4) is not exclusive.

Because there appears to be no non-exempt equity in any property of the estate, the case should be dismissed unless the Debtor prefers conversion.

CONCLUSION

Based on the foregoing, this case should be dismissed.

Dated: March 15, 2011

BARBARA A. MATTHEWS
Assistant United States Trustee

By: /s/Matthew R. Kretzer
MATTHEW R. KRETZER, Trial Attorney

Attorneys for AUGUST B. LANDIS,
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